

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

KARUK TRIBE OF CALIFORNIA,) Civ. No. 04-4275 (SBA)
)
Plaintiff;)
)
v.) JOINT STIPULATION
) FOR PARTIAL SETTLEMENT
) AND PROPOSED ORDER
UNITED STATES FOREST SERVICE;)
JEFF WALTER, Forest Supervisor,)
Six Rivers National Forest;)
MARGARET BOLAND, Forest Supervisor,)
Klamath National Forest,)
)
Defendants.)
)
_____)

Plaintiff Karuk Tribe of California and Defendants United States Forest Service et al.
("Federal Defendants") hereby submit this Joint Stipulation for Partial Settlement and Proposed
Order for this Court's approval. Plaintiff and Federal Defendants agree to the following:

WHEREAS, on January 31, 2005, Plaintiff Karuk Tribe brought claims, alleging, *inter alia*,
that the Defendant United States Forest Service approved five mining Plans of Operation ("PoOs")
without compliance with the Endangered Species Act ("ESA") and the National Environmental
Policy Act ("NEPA"), and the implementing regulations of these laws. These PoOs are listed in
Paragraph 5 of Plaintiff's Second Amended Complaint;

WHEREAS, compliance with these laws and regulations is required when the Forest Service
reviews and/or approves a PoO;

WHEREAS, it is in the interests of the public, the parties and judicial economy to resolve the
issues involving the challenged PoOs without continued litigation;

NOW, THEREFORE, the parties agree to the following in partial settlement of this case:

1. Defendants agree that each of the challenged PoOs were approved without compliance with the ESA, NEPA, and their implementing regulations.
2. Defendants agree that, in the future, the United States Forest Service will fully comply with these and all other applicable laws and regulations prior to approval of any PoO.
3. Plaintiff agrees to dismiss with prejudice its claims regarding the five PoOs identified in paragraph 5 of the Second Amended Complaint.
4. Regardless of the preceding paragraph, Plaintiff reserves the right to seek, at the conclusion of this case, award of its reasonable costs, fees, expenses and disbursements, including reasonable attorney fees and costs, associated with this case, including but not limited to, Plaintiff's challenge to the Forest Service's approval of each of the five PoOs without compliance with the ESA, NEPA, and their implementing regulations.
5. The parties agree that this partial settlement does not impact any of Plaintiff's remaining claims or any of the Defendants' stated defenses to those claims.
6. The undersigned representatives of the Plaintiff and Defendants certify that they are fully authorized by the party or parties they represent to enter into the terms and conditions of this agreement and to legally bind the parties to it.
7. Nothing in this agreement shall be construed to deprive a federal official of authority to revise, amend or promulgate regulations.
8. Nothing in this agreement shall be interpreted as, or shall constitute, a commitment or requirement that the Forest Service obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

9. This agreement is based on and limited solely to the facts involved in this case. Nothing in this agreement shall be construed to limit Plaintiff's right to bring a new challenge to any other mining-related or other decision of the Forest Service.

Respectfully submitted this _22nd_ day of April, 2005.

/s/ Joshua Borger

James R. Wheaton (State Bar No. 115230)
Iryna A. Kwasny (State Bar No. 173518)
Joshua Borger (State Bar No. 231951)
ENVIRONMENTAL LAW FOUNDATION
1736 Franklin Street, 9th Floor
Oakland, CA 94612
Tel: (510) 208-4555
Fax: (510) 208-4562

/s/ Roger Flynn

Roger Flynn, Appearance Pro Hac Vice
Jeffrey C. Parsons, Appearance Pro Hac Vice
WESTERN MINING ACTION PROJECT
2260 Baseline Rd., Suite 101A
Boulder, CO 80302
Tel: (303) 473-9618
Fax: (303) 786-8054
wmap@igc.org

Attorneys for the Karuk Tribe of California

KELLY A. JOHNSON
Acting Assistant Attorney General

/s/ Barclay T. Samford

BARCLAY T. SAMFORD
Trial Attorney
U.S. Department of Justice
999 18th Street, Suite 945, North Tower

1 Denver, CO 80202
2 (303) 312-7362
3 Fax (303) 312-7379
4 BRIAN C. TOTH
5 Trial Attorney
6 U.S. Department of Justice
7 P.O. Box 663
8 Washington, D.C. 20044
9 (202) 305-0639
10 Fax (202) 305-0506

11 KEVIN V. RYAN (State Bar No. 118321)
12 United States Attorney
13 Charles M. O'Connor (State Bar No. 56320)
14 Assistant United States Attorney
15 Environment & Natural Resources Unit
16 450 Golden Gate Ave., Box 36055
17 San Francisco, CA 94102
18 (415) 436-7180
19 Fax (415) 436-6748

20 Of counsel:

21 ROSE MISKOVSKY
22 U.S. Department of Agriculture
23 Office of General Counsel
24 33 New Montgomery Street, 17th Floor
25 San Francisco, CA 94105-1924
26 Telephone: (415) 744-3158
27 Facsimile: (415) 744-3170

28 Attorneys for Federal Defendants

IT IS SO ORDERED

/s/ Sandra Brown Armstrong
Sandra B. Armstrong
U.S. District Court Judge

4-26-05
Date